

relate to criminal proceedings held in the 180th Judicial District Court of Harris County, Texas for trademark counterfeiting.

2. The cause numbers for Plaintiffs' criminal proceedings in the 180th Judicial District are 1495767 and 1495768. Both cases were dismissed on or about October 11, 2016.

3. On January 20, 2016, the Harris County Sheriff's Office conducted an inspection of Plaintiffs' warehouse and seized approximately 500 boxes and 40,000 items of apparel. On the same day, Plaintiffs were arrested.

4. All of the seized items were transported to Uncle Bob's Storage Facility located at 5110 Franz Road, Katy, Texas 77493. The items seized are stored in locker numbers 728 and 734. The Harris County Sheriff's Office retained the key to these lockers.

5. The majority of the items seized are still stored in Uncle Bob's Storage Facility. However, one box and multiple individual items were transferred to the Harris County Sheriff's Property/Evidence Division at the beginning of the investigation. The keys to the storage units remain in the possession of the Harris County Sheriff's Property/Evidence Division located at 601 Lockwood Drive, Houston, Texas 77011.

6. The items in the possession of the Harris County Sheriff's Property/Evidence Division are tagged as follows:

- 160001779001 – Master key to the storage units.
- 160001864001 – Two short sleeve American Eagle shirts.
- 160001864002 – Two long sleeve American Eagle shirts.
- 160001864003 – One long sleeve Aeropostale shirt.
- 160001864004 – One U.S. Polo hoodie.
- 160001864005 – Approximately 60 sealed American Eagle logo shirts.

- 160001864006 – Key to the master lock.
- 160001779002 – White iPhone 6.
- 160001779003 – Black iPhone 6.
- 160002872001 – Emtel 8gb USB Drive with audio files.
- 160003064001 – CD with audio recordings.
- 160008060001 – Blue Ray DVD with phone data.

7. At this time, the parties are in the process of scheduling an inspection of the items seized from the warehouse which are in the possession of the Harris County Sheriff's Property/Evidence Division.

8. However, the Harris County Sheriff's Property/Evidence Division informed ISC that it will not allow access to the evidence to conduct an inspection until they have a Court Order permitting them to do so. Therefore, the Parties file this motion and respectfully request that the Court order:

- The Harris County Sheriff's Property/Evidence Division to transfer all the evidence in its evidence locker pertaining to Plaintiffs' criminal proceedings to Uncle Bob's Storage Facility so that all evidence can be stored at a single location;
- After transferring the evidence from the Harris County Sheriff's Property/Evidence Division to Uncle Bob's Storage Facility, Harris County Sheriff's Office to transfer the possession of the keys to the storage units to the chambers of Judge Palermo, or other Court ordered third-party representative, so that the keys remain in a third-party's possession until this case is concluded and all claims fully disposed of, through appeal;

- ISC continue to fund the storage units and then invoice AEO for reimbursement until the conclusion of this case; and
- The Court permit the parties to access the items and evidence for inspection pursuant to the following protocol:
 - Any party desiring to inspect the items shall advise all other parties of its/their intent to inspect, and the parties will make reasonable efforts to coordinate with Judge Palermo, or other Court ordered third-party representative, and party counsel to access the storage lockers at Uncle Bob's Storage Facility;
 - In the event a party wishes to remove any item for testing or physical examination, such party will identify and photograph such items and detail the proposed methodology, location and persons performing the testing or examination in a log to be maintained with the keys and emailed to all counsel of record. In no event shall undisclosed or destructive procedures be undertaken upon any released items;
 - A party will take the selected items, conduct its inspection, examination or testing and return all released items to the storage facility within three weeks of obtaining the items; and
 - The party will then record all the returned items in the log and Judge Palermo or other Court ordered third-party representative will ensure that all items released were accounted for and returned.

PRAYER

For these reasons, the Defendants respectfully pray the Court conduct a hearing on this Motion and issue an Order regarding the evidence in Harris County Sherriff's Property/Evidence Division's possession so that the Parties may access the evidence, conduct an inspection, and avoid any issues relating to the tampering of evidence.

Respectfully submitted,

/s/ Kyle Giacco

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CERTIFICATE OF CONFERENCE

Despite counsel for the moving parties' good faith effort to confer with counsel for Plaintiffs, the parties have been unable to reach agreement regarding this motion. Counsel for ISC conferenced via telephone with counsel for Plaintiffs on June 11, 2019, who indicated general agreement to a motion of this type. Counsel for ISC then forwarded the draft motion to counsel for Plaintiffs on June 11, 2019, for review and comment. Plaintiffs' counsel then returned suggested revisions to the motion on June 19, 2019. Those changes were largely adopted and incorporated into the draft of this motion. Then on June 21, 2019, counsel for ISC, AEO and Plaintiffs conferenced via telephone regarding Plaintiffs' proposed changes and Plaintiffs' issues with the proposed procedure to the handling of the goods. Those concerns were again largely addressed and incorporated into the draft motion. A revised draft was then forwarded back to counsel for Plaintiffs on June 27, 2019 for final review and approval. Despite multiple follow-up phone calls to Plaintiffs' counsel by counsel for ISC on June 28, 2019, and follow-up email from counsel for AEO on July 1, 2019, no such approval—or even a response—was received. Notwithstanding the incorporation and amendments to the proposed protocol to address Plaintiffs' concerns, according to correspondence to Ms. Allinger on July 2, 2019, Plaintiffs' position on the motion is as follows: "We are in agreement as to onsite inspection except as to the 'keeper of the key,' but that is only to locate a neutral party to hold the key. The objection Plaintiffs have is to removal of the items in storage to Defendants' out of state offices. I have had issues with this type of thing in the past in other matters. I am open to allowing an independent lab/expert to conduct tests etc, but it is my understanding that the Plaintiffs want to ship the items out of state for the convenience of their representatives' visible inspection. In Plaintiffs' view onsite inspection with a representative of both parties present is sufficient for visible inspections." Therefore, the Defendants have filed this motion without the agreement of Plaintiffs.

/s/ Kyle Giacco

Kyle Giacco

CERTIFICATE OF SERVICE

Pursuant to the Federal Rules of Civil Procedure, I hereby certify that a true and correct copy of the foregoing instrument to which this Certificate is attached has duly been served upon each party by facsimile, U.S. First Class Mail and/or using the ECF System for filing and transmittal of a Notice of Electronic Filing on this, the 24th day of July, 2019.

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